

# The State of New Hampshire

## SUPERIOR COURT

MERRIMACK COUNTY

( ) COURT

( ☒ ) JURY

### WRIT OF SUMMONS

State of New Hampshire

Amerada Hess Corporation; ChevronTexaco Corporation; Chevron U.S.A., Inc.; Citgo Petroleum Corporation; ConocoPhillips Company; El Paso Merchant Energy-Petroleum Company; ExxonMobil Corporation; ExxonMobil Oil Corporation; Gulf Oil Limited Partnership; Irving Oil Corporation; Irving Oil Limited; Lyondell Chemical Company; Motiva Enterprises, LLC; Shell Oil Company; Statoil Marketing and Trading (US) Inc.; Sunoco, Inc. (R&M); Texaco Refining and Marketing, Inc.; Ultramar Energy, Inc.; Ultramar Limited; Unocal Corporation; Valero Energy Corporation; and Valero Marketing and Supply Company

The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of November, 2003 .  
YEAR MONTH

The PLAINTIFF(S) state(s):

See attached Declaration.

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.

Peter W. Heed, Esq.  
INDORSER (sign and print name)

September 30, 2003  
DATE OF WRIT

#### NOTICE TO THE DEFENDANT

The Plaintiff listed above has begun legal action against you. **You do not have to physically appear** in Court on the return day listed above since there will be no hearing on that day. However, if you intend to contest this matter, you or your attorney must file a written appearance form with the Clerk's Office by that date. (Appearance forms may be obtained from the Clerk's Office.) You will then receive notice from the Court of all proceedings concerning this case. If you fail to file an appearance by the return day, judgment will be entered against you for a sum of money which you will then be obligated to pay.

Witness, WALTER L. MURPHY, Chief Justice, Superior Court.

William S. McGraw  
William S. McGraw, Clerk  
NH Superior Court Merrimack County  
PO Box 2880  
Concord, NH 03302-2880  
(603) 225-5501

Maureen D. Smith  
SIGNATURE OF PLAINTIFF/ATTORNEY

Maureen D. Smith, Senior Assistant Attorney  
PRINTED/TYPED NAME General  
Office of the Attorney General  
33 Capitol Street  
ADDRESS

Concord, NH 03301-6397 / 271-3679  
PHONE

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

State of New Hampshire

v.

Amerada Hess Corporation;  
ChevronTexaco Corporation;  
Chevron U.S.A., Inc.;  
Citgo Petroleum Corporation;  
ConocoPhillips Company;  
El Paso Merchant Energy-Petroleum Company;  
ExxonMobil Corporation;  
ExxonMobil Oil Corporation;  
Gulf Oil Limited Partnership;  
Irving Oil Corporation;  
Irving Oil Limited;  
Lyondell Chemical Company;  
Motiva Enterprises, LLC;  
Shell Oil Company;  
Statoil Marketing and Trading (US) Inc.;  
Sunoco, Inc. (R&M);  
Texaco Refining and Marketing, Inc.;  
Ultramar Energy, Inc.;  
Ultramar Limited;  
Unocal Corporation;  
Valero Energy Corporation; and  
Valero Marketing and Supply Company.

**DECLARATION**

The State of New Hampshire, by and through the New Hampshire Attorney General, 33 Capitol Street, Concord, New Hampshire, complains against Amerada Hess Corporation, 1185 Avenue of the Americas, New York, New York; ChevronTexaco Corporation, 6001 Bollinger Road, San Ramon, California; Chevron U.S.A., Inc., 6001 Bollinger Road, San Ramon, California; Citgo Petroleum Corporation, 6100 South Yale

Avenue, Tulsa, Oklahoma; ConocoPhillips Company, 600 North Dairy Ashford, Houston, Texas; El Paso Merchant Energy-Petroleum Company, 1001 Louisiana Street, Houston, Texas; ExxonMobil Corporation, 5959 Las Colinas Boulevard, Irving, Texas; ExxonMobil Oil Corporation, 5959 Las Colinas Boulevard, Irving, Texas; Gulf Oil Limited Partnership, 90 Everett Avenue, Chelsea, Massachusetts; Irving Oil Corporation, 190 Commerce Way, Portsmouth, New Hampshire; Irving Oil Limited, 210 Crown Street/10 Sydney Street, Saint John, New Brunswick, Canada; Lyondell Chemical Company, 1221 McKinney Street, Suite 700, Houston, Texas; Motiva Enterprises, LLC, 1100 Louisiana, Suite 1000, Houston, Texas; Shell Oil Company, One Shell Plaza, 910 Louisiana, Houston, Texas; Statoil Marketing and Trading (US) Inc., 225 High Ridge Road, Stamford, Connecticut; Sunoco, Inc. (R&M), 1801 Market Street, Philadelphia, Pennsylvania; Texaco Refining and Marketing, Inc., One Shell Plaza, 910 Louisiana, Houston, Texas; Ultramar Energy, Inc., One Valero Place, San Antonio, Texas; Ultramar Limited, 2200 McGill College, Montreal, Quebec, Canada; Unocal Corporation, 2141 Rosencrans Avenue, Suite 4000, El Segundo, California; Valero Energy Corporation, One Valero Place, San Antonio, and Texas; Valero Marketing and Supply Company, One Valero Place, San Antonio, Texas; (hereinafter collectively, "defendants") and, based on information and belief and investigation of counsel, alleges as follows:

### **I. SUMMARY OF THE CASE**

1. The State of New Hampshire, by and through the Attorney General, (hereinafter the "State"), brings this action at law in order to protect and to remedy important state interests affected by widespread contamination of the waters of the State with methyl tertiary butyl ether ("MTBE"), a chemical used in some gasoline.

2. The waters of the State, whether located above or below ground, constitute limited, precious and invaluable public resources that are held in trust for the public benefit and for which the State has the authority and responsibility to protect, conserve and manage in the interest of present and future generations.

3. Defendants' use of MTBE in gasoline has created an unprecedented threat to both the surface and groundwaters of the State (hereinafter "waters of the State"), including many public and private drinking water supplies. Unlike other gasoline constituents, MTBE contaminates and spreads in water resources quickly, and hides and resists removal and treatment, thereby presenting a serious threat to waters throughout the State. MTBE has already contaminated numerous drinking water sources in the State and threatens to contaminate many more, as a result of normal and foreseen storage, purchase and use of gasoline by its residents.

4. MTBE can cause significant adverse health effects, and, even at very low concentrations, can render drinking water foul, putrid and unfit for human consumption.

5. The defendants in this action are major oil and chemical companies that manufacture MTBE and supply gasoline containing MTBE to the State. The defendants include MTBE manufacturers and refiners and major-brand marketers of gasoline containing MTBE, which was entered and continues to be entered into the stream of the State's commerce and which has damaged and continues to damage the waters of the State.

6. In addition to producing and/or supplying MTBE or gasoline containing MTBE for importation into and sale within the State, defendants knowingly and willfully promoted, marketed and sold MTBE and gasoline and other petroleum products

(hereinafter collectively, "gasoline") containing MTBE, when they knew or reasonably should have known that MTBE would be released into the environment and pollute the waters of the State in violation of New Hampshire law, would interfere with the State's interest in protecting and preserving surface and groundwaters and threaten public health and welfare and the environment, as has occurred and is continuing to occur within the State.

7. The State alleges that under New Hampshire law defendants are: strictly liable for manufacturing and supplying a defective product and failing to provide adequate warnings in connection therewith; liable for creating a public nuisance; strictly liable for directly or indirectly causing or suffering the discharge of MTBE into the waters of the State; liable for trespass upon the waters of the State; liable for negligently causing damage to the waters of the State; liable for unfair and deceptive business acts; and liable for all resulting damages, including all costs to investigate, monitor, prevent, abate, contain and remove any contamination or threatened contamination from MTBE and to restore and protect State waters. The State also alleges that certain defendants are liable for enhanced damages to reflect the aggravating circumstances caused by such defendants' wanton, malicious and oppressive conduct. Finally, the State alleges that defendants are liable for civil penalties under State environmental and consumer protection laws.

## **II. PLAINTIFF**

8. Plaintiff is the State of New Hampshire (the "State"), as represented by and through the Attorney General of the State of New Hampshire, with principal offices at 33 Capitol Street, Concord, New Hampshire. The State bring this action as a trustee

of the waters within New Hampshire and pursuant to its police power, which includes, but is not limited to, its power to prevent pollution of the surface and groundwaters of the State, to prevent nuisances and to prevent potential hazards to public health, welfare and the environment.

9. The State also has a significant property interest in the waters of the State and a quasi-sovereign interest in protecting the quality of such waters. The contamination of waters of the State by MTBE constitutes injury to the environment and to property held in public trust by the State for which the State seeks damages in its capacity as *parens patriae*.

10. The Attorney General is expressly authorized to enforce statutes pertaining to environmental protection, control and preservation, to exercise common law powers to protect the environment, and to bring public nuisance and other actions in Superior Court in the name of the State when the activity complained of may have a substantial impact upon the environment of the State. RSA 21-M:10, II.

11. The Attorney General is expressly authorized to institute such legal or equitable action as he deems necessary to recover or obtain judgment for the costs of containment, cleanup, removal, corrective measures or civil penalties related to the discharge or spillage of oil, which includes petroleum products and their by-products of any kind, into the waters of the State. RSA 146-A:9; RSA 146-G:3. The Attorney General is also expressly authorized to bring an action under RSA 358-A:4 in the name of the State to prevent, remedy and penalize violations of the Consumer Protection Act.

### **III. DEFENDANTS**

12. The defendants in this action are petroleum-related corporations doing business in New Hampshire. The two categories of defendants are: (1) the refiners and major-brand marketers of gasoline containing MTBE; and (2) the manufacturers and promoters of MTBE that contaminates and threatens the waters of the State.

#### **A. Refiner/Marketer Defendants**

13. The following defendants, at all times relevant to this action, refined, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that each such defendant knew or should have known would be delivered into the State (or areas affecting the waters of the State):

- (a) Amerada Hess Corporation ("Hess") is a Delaware corporation with its principal place of business at 1185 Avenue of the Americas, New York, New York, doing business and registered to transact business in New Hampshire.
- (b) ChevronTexaco Corporation ("ChevronTexaco") is a Delaware corporation with its principal place of business at 6001 Bollinger Road, San Ramon, California, doing business in New Hampshire. On information and belief, the State alleges that ChevronTexaco was formed as a result of a merger in 2001 of Chevron Corporation and Texaco, Inc. On information and belief, the State further alleges that ChevronTexaco owns and/or controls defendant Chevron U.S.A., Inc.
- (c) Chevron U.S.A., Inc. ("Chevron U.S.A.") is a Pennsylvania

corporation with its principal place of business at 6001 Bollinger Road, San Ramon, California, doing business and registered to transact business in New Hampshire. The term "Chevron" as used in this Writ refers to ChevronTexaco and/or Chevron U.S.A.

(d) Citgo Petroleum Corporation ("Citgo") is a Delaware corporation with its principal place of business at 6100 South Yale Avenue, Tulsa, Oklahoma, doing business and registered to transact business in New Hampshire.

(e) ConocoPhillips Company ("ConocoPhillips") is a Delaware corporation with its principal place of business at 600 North Dairy Ashford, Houston, Texas, doing business and registered to transact business in New Hampshire. On information and belief, the State alleges that ConocoPhillips was formed as the result of a merger in 2002 of Conoco, Inc. and Phillips Petroleum Company. On information and belief, the State further alleges that ConocoPhillips is the successor corporation to Conoco, Inc. and Phillips Petroleum Company. The State is further informed and believed that ConocoPhillips is the successor corporation to Tosco Corporation, including its subsidiary Tosco Refining LP, which was acquired by Phillips Petroleum Company in 2001.

(f) El Paso Merchant Energy-Petroleum Company ("El Paso") is a Delaware corporation with its principal place of business at 1001



Louisiana Street, Houston, Texas, doing business and registered to transact business in New Hampshire. On information and belief, the State alleges that El Paso is the successor corporation to Coastal Refining and Marketing, Inc.

- (g) ExxonMobil Corporation ("ExxonMobil Corp.") is a New Jersey corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, doing business and registered to transact business in New Hampshire. On information and belief, the State alleges that ExxonMobil was formed as a result of a merger in 1999 of Mobil Corporation and Exxon Corporation. On information and belief, the State alleges that ExxonMobil is the successor corporation to Exxon Corporation and Mobil Corporation.
- (h) ExxonMobil Oil Corporation ("ExxonMobil Oil") is a New Jersey corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, doing business and registered to transact business in New Hampshire. The term "ExxonMobil" as used in this Writ refers to ExxonMobil Corp. and/or ExxonMobil Oil.
- (i) Gulf Oil Limited Partnership ("Gulf") is a Delaware limited partnership with its principal place of business at 90 Everett Avenue, Chelsea, Massachusetts, doing business and registered to transact business in New Hampshire.

- (j) Irving Oil Corporation ("Irving Oil Corp.") is a Maine corporation with its principal place of business at 190 Commerce Way, Portsmouth, New Hampshire, doing business and registered to transact business in New Hampshire.
- (k) Irving Oil Limited ("Irving Oil") is a Canadian corporation with its principal place of business at 210 Crown Street/10 Sydney Street, Saint John, New Brunswick, Canada, doing business in New Hampshire. The term "Irving" as used in this Writ refers to Irving Oil Corp. and/or Irving Oil.
- (l) Lyondell Chemical Company ("Lyondell") is a Delaware corporation with its principal place of business at 1221 McKinney Street, Suite 700, Houston, Texas, and doing business and registered to transact business in New Hampshire. On information and belief, the State alleges that Lyondell owns and/or controls Lyondell-Citgo Refining, LP, which produces refined petroleum products, including gasoline.
- (m) Motiva Enterprises, LLC ("Motiva") is a Delaware limited liability company with its principal place of business at 1100 Louisiana, Suite 1000, Houston, Texas, doing business and registered to transact business in New Hampshire. On information and belief, the State alleges that Motiva is a successor in interest to certain entities related to defendant Shell Oil Company and defendant

Texaco Refining and Marketing, Inc., and is owned and/or controlled by defendant Shell Oil Company.

- (n) Shell Oil Company ("Shell Oil") is a Delaware corporation with its principal place of business at One Shell Plaza, 910 Louisiana, Houston, Texas, doing business and registered to transact business in New Hampshire. The term "Shell" as used herein refers to Motiva and/or Shell Oil.
- (o) Statoil Marketing and Trading (US) Inc. is a Delaware corporation with its principal place of business at 225 High Ridge Road, Stamford, Connecticut, doing business and registered to transact business in New Hampshire.
- (p) Sunoco, Inc. (R&M) ("Sunoco") is a Pennsylvania corporation with its principal place of business at 1801 Market Street, Philadelphia, Pennsylvania, doing business and registered to transact business in New Hampshire.
- (q) Texaco Refining & Marketing, Inc. ("Texaco") is a Delaware corporation with its principal place of business at One Shell Plaza, 910 Louisiana, Houston, Texas, doing business and registered to transact business in New Hampshire. On information and belief, the State alleges that Texaco is owned and/or controlled by defendant Shell Oil.
- (r) Ultramar Energy, Inc. ("Ultramar Energy") is a Delaware

corporation with its principal place of business at One Valero Place, San Antonio, Texas, doing business and registered to transact business in New Hampshire.

- (s) Ultramar Limited ("Ultramar") is a Canadian corporation with its principal place of business at 2200 McGill College, Montreal, Quebec, Canada, doing business in New Hampshire.
- (t) Unocal Corporation, individually and formerly known as Union Oil Company of California ("Unocal"), is a Delaware corporation with its principal place of business at 2141 Rosencrans Avenue, Suite 4000, El Segundo, California, doing business and registered to transact business in New Hampshire.
- (u) Valero Energy Corporation ("Valero Energy") is a Delaware corporation with its principal place of business at One Valero Place, San Antonio, Texas, doing business in New Hampshire. On information and belief, the State alleges that Valero merged with Ultramar Diamond Shamrock Corporation in 2001, and that, as a consequence of such merger, Valero owns and/or controls certain entities related to Ultramar Diamond Shamrock Corporation, including defendants Ultramar Energy and Ultramar.
- (v) Valero Marketing and Supply Company ("Valero Marketing") is a Delaware corporation with its principal place of business at One Valero Place, San Antonio, Texas, doing business and registered to

transact business in New Hampshire. The term "Valero" as used in this Writ refers to Valero Energy, Valero Marketing, Ultramar and/or Ultramar Energy.

14. The defendants identified in paragraphs 13(a) through 13(v) above will be collectively referred to as the "refiner/marketer defendants." The refiner/marketer defendants, and each of them, among other things: (a) designed, manufactured, formulated, refined, set specifications for, exchanged, promoted, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State), such that releases of MTBE contaminate and threaten the waters of the State; (b) were legally responsible for and committed each of the multiple tortious and ongoing wrongful acts alleged in this Writ; (c) participated in one or more enterprises to promote MTBE and/or gasoline containing MTBE, despite the availability of reasonable alternatives and their actual or constructive knowledge that the pollution alleged herein would be the inevitable result of their conduct; and (d) in doing the tortious and wrongful acts alleged in this Writ, acted in the capacity of joint-venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent transferee, fraudulent transferor, controller, alter-ego, co-conspirator, licensee, licensor, patent holder and/or indemnitor of each of the named defendants.

**B. Manufacturer Defendant**

15. Defendant Lyondell also manufactures MTBE for use in gasoline. On information and belief, the State alleges that Lyondell is a successor in interest to ARCO Chemical Company, which Lyondell acquired in 1998.

16. Lyondell manufactured, promoted and sold MTBE to gasoline refiners with actual or constructive knowledge that: (a) the refiners would blend such MTBE into gasoline; and (b) such gasoline would, in turn, be delivered into the State (or areas affecting the waters of the State).

17. Lyondell will be referred to as the "manufacturer defendant." The manufacturer defendant, among other things: (a) designed, manufactured, formulated, promoted, marketed, distributed, exchanged and/or sold MTBE that contaminates and threatens the waters of the State; (b) is legally responsible for and committed each of the multiple tortious and ongoing wrongful acts alleged in this Writ; (c) participated in one or more enterprises to promote MTBE and/or gasoline containing MTBE, despite the availability of reasonable alternatives and its actual or constructive knowledge that the pollution alleged herein would be the inevitable result of its conduct; and (d) in doing the tortious and wrongful acts alleged in this Writ, acted in the capacity of joint-venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent transferee, fraudulent transferor, controller, alter-ego, co-conspirator, licensee, licensor, patent holder and/or indemnitor of each of the named defendants.

18. The refiner/marketer defendants and manufacturer defendant are referred to collectively herein as "defendants."

19. Among other things, the defendants knew, or reasonably should have known, that: (a) the gasoline distribution and retail system throughout the State contained leaking gasoline storage and delivery systems; (b) MTBE is more readily released from gasoline storage and delivery systems than the constituents of conventional gasoline; and (c) releases of MTBE into the environment would be an inevitable consequence of placing MTBE into the stream of commerce in the absence of precautionary measures to prevent or mitigate such releases – measures that the defendants failed to take.

20. The defendants also knew, or reasonably should have known, that, unlike the constituents of conventional gasoline, MTBE, when released into the environment, would move great distances, mix easily with groundwater, resist biodegradation, render drinking water unsafe and/or non-potable, and require significant expenses to find and remove from public and private drinking water supplies.

21. The defendants further knew, or reasonably should have known, that various consumer and commercial activities, such as use of snowmobiles, motorized watercraft and lawnmowers and operation of junkyards and vehicle maintenance and repair facilities, would result in releases of MTBE into waters of the State.

22. Despite knowing the devastating risk of drinking water contamination posed by MTBE, and despite the availability of reasonable alternatives, the defendants failed to warn customers, retailers, regulators or public officials, including the State of New Hampshire, and failed to take any other precautionary measures to prevent or mitigate such contamination. Instead, defendants promoted MTBE, and gasoline containing MTBE, as environmentally sound products appropriate for widespread use. Moreover, certain defendants engaged in separate and joint activities to suppress, conceal

and/or discredit studies and other information regarding the hazards of MTBE.

Defendants' wrongful conduct, among other things, encouraged the State to participate in the federal reformulated gasoline program without a full understanding of the risks to the State's water resources, which resulted in: (a) a dramatic increase in the use and presence of gasoline containing MTBE in the State; (b) the consequent injuries to the waters of the State; and (c) the substantial damages incurred by the State in response thereto.

23. To the extent any act or omission of any of the defendants is alleged in this Writ, the officers, directors, agents, employees or representatives of each such defendant committed or authorized each such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of such defendants, and did so while acting within the scope of their duties, employment or agency.

#### **IV. JURISDICTION AND VENUE**

24. Jurisdiction is vested in this Court pursuant to: (a) RSA 491:7, which grants this Court subject matter jurisdiction over all civil actions according to the course of the common law, except certain actions not applicable herein; (b) RSA 491:14 which grants this Court subject matter jurisdiction over suits in equity; (c) RSA 491:22 which grants this Court subject matter jurisdiction over claims for declaratory relief; (d) RSA 21-M:10, which authorizes the Court to hear public nuisance and other actions brought by the Attorney General in the name of the State; (e) RSA 146-A:9 and 146-G:3, which authorize the Court to hear legal and/or equitable actions instituted by the Attorney General to recover or obtain judgment for the costs of containment, cleanup, removal, corrective measures and/or civil penalties; and (f) RSA 358-A:4, which authorizes the



Attorney General to bring an action in the name of the State in this Court for temporary or permanent injunction, restitution and civil penalties.

25. Venue is proper in Merrimack County pursuant to RSA 507:9. This is a transitory action brought by the State in the county in which the capital is located.

## **V. FACTUAL ALLEGATIONS**

### **A. The Contaminant MTBE.**

26. MTBE is a chemical compound produced from methanol and isobutylene. It is used by some refiners in some gasoline. As used in this Writ, MTBE consists not only of methyl tertiary butyl ether, but also the degradation byproducts of and contaminants in commercial grade MTBE, including but not limited to tertiary butyl alcohol.

27. One way that MTBE contaminates the environment is through releases, leaks, overfills, and spills from gasoline delivery facilities, including, but not limited to, gasoline stations, gasoline storage, transfer, delivery, and dispensing systems ("gasoline delivery systems").

28. Another way that MTBE contaminates the environment is through releases, leaks, overfills, and spills of gasoline associated with or incident to certain consumer activities, including but not limited to the use of lawnmowers, snowmobiles, and motorized watercraft, and certain commercial activities, including but not limited to the operation of junkyards and vehicle repair and maintenance facilities.

29. As a result of its physical characteristics, MTBE finds unique pathways for release into the environment from gasoline delivery systems and is more readily released from such systems than conventional gasoline components.

30. Once released to the environment, MTBE's unique characteristics cause extensive environmental contamination and a corresponding threat to the public health and welfare beyond that caused by gasoline that does not contain MTBE. In particular, the fate and transport of MTBE in the subsurface differs significantly from that of gasoline constituents that have historically been of environmental and/or toxicological concern, specifically the "BTEX compounds" (benzene, toluene, ethylbenzene, and xylene).

31. When released into the environment, MTBE separates from other gasoline constituents in the presence of moisture. In contrast to the BTEX compounds, MTBE has a strong affinity for water, is easily dissolved and does not readily adhere to soil particles, making it more mobile and able to penetrate great distances from the source of the release.

32. In groundwater, MTBE moves freely at approximately the rate of the water's movement, unlike BTEX compounds, which tend to adhere to soil and float on the surface of water. This makes it more difficult to find and more difficult to remove or treat than BTEX compounds.

33. MTBE is also more persistent than BTEX compounds because it does not readily biodegrade in groundwater. As a result, MTBE is relatively more difficult and expensive to remove from groundwater.

34. In sum, when MTBE is released into the environment, it migrates farther and faster through soil and groundwater, penetrates deeply into aquifers, resists biodegradation and results in persistent contamination that is more costly to address. As

a result of these properties, MTBE has contaminated, and continues to contaminate and threaten, the groundwaters of the State.

35. MTBE also contaminates surface waters through releases, leaks, overfills and spills of gasoline associated with or incident to certain consumer and commercial activities, including but not limited to the use of snowmobiles and motorized watercraft.

36. Not all of the MTBE contamination of water resources in the State can be traced to a specific source.

37. Contamination of the State's waters with MTBE has damaged and continues to damage and threaten these precious resources, and threatens the health, safety and welfare of the citizens of the State.

38. Federal and other studies link MTBE to a variety of adverse health effects.

39. The State has established a health-based Primary Maximum Contaminant Level ("MCL") for MTBE of 13 parts per billion ("ppb"). This is one of the most stringent standards in the nation.

40. The establishment of the health-based MCL for MTBE triggers certain state regulatory requirements if that level is exceeded in drinking water supplies. Such state requirements include, but are not limited to, required investigatory and remedial action to protect public health and the environment and remedial actions by public water suppliers.

41. In addition to the health and environmental risks posed by MTBE in drinking water supplies, MTBE can render water supplies undrinkable by changing the taste and odor of water in such a manner that it becomes a foul smelling liquid with a turpentine odor and a chemical taste unfit for human consumption. Many individuals can

smell and/or taste MTBE in drinking water at levels well below the health-based MCL of 13 ppb.

**B. History of MTBE in the State.**

42. Oil companies began blending MTBE into gasoline in the late 1970's. Initially used as an octane enhancer, MTBE was used throughout the 1980's at low concentrations in some gasoline by some refiners, primarily in high-octane grades.

43. In or about the late 1970's, the U.S. Environmental Protection Agency ("EPA") registered MTBE as a fuel additive that does not cause or contribute to the failure of any emission control device or system, pursuant to section 211 of the Clean Air Act, 42 U.S.C. § 7545. Such registration did not and does not constitute endorsement, certification, or approval of MTBE as a fuel additive by any agency of the United States.

44. Refiners, including defendants, significantly increased their use of MTBE in gasoline after 1990. In 1990, Congress established the Reformulated Gasoline Program ("RFG Program") in section 211(k) of the Clean Air Act, 42 U.S.C. § 7545(k). The RFG Program requires the use of reformulated gasoline in certain metropolitan areas with the most severe summertime ozone ("smog") levels, none of which is located in New Hampshire. The RFG Program also allows states with other, less serious, ozone non-attainment areas to opt into the program as a means to address their nonattainment.

45. Unlike conventional gasoline, reformulated gasoline under the RFG Program must contain a specified chemical oxygen content. The RFG Program requires that reformulated gasoline sold in areas subject to the RFG Program consist of approximately 2.0% oxygen by weight.

46. The RFG Program is both fuel neutral and oxygenate neutral, in that it does not mandate the use of MTBE or any particular oxygenate. Rather, it leaves the decision on how to meet the oxygen requirements to individual refiners, including defendants. Alternative oxygenates other than MTBE have, at all relevant times, been available to defendants.

47. New Hampshire sought to "opt in" four of its counties to the federal RFG Program as a means to address air quality problems in those counties. In particular, on October 22, 1991, the State submitted an application to EPA seeking to opt in to the RFG Program the four southern counties of Merrimack, Hillsborough, Rockingham and Strafford, effective January 1, 1995. EPA approved the State's application on December 23, 1991.

48. At the time that New Hampshire opted into the federal RFG program, it had no control over which oxygenate would be added to gasoline supplied to New Hampshire.

49. At the time that New Hampshire chose to opt into the RFG Program, the defendants had not provided the State with all of the information available to them concerning the unique characteristics and hazards associated with use of MTBE as an oxygenate in gasoline.

50. Defendants made MTBE their oxygenate of choice for reformulated gasoline manufactured for and supplied to New Hampshire. From the date of approval of New Hampshire's opt-in of the four southern counties until the present, defendants' gasoline sold in New Hampshire has contained much greater concentrations of MTBE

than before the opt-in as a result of defendants' choice to meet the RFG requirements through use of MTBE.

51. Gasoline containing low levels of MTBE was sold at various times, in various quantities and in various locations in New Hampshire before 1995. Reformulated gasoline containing significantly higher quantities of MTBE has been sold on a virtually universal basis in the four southern counties of Merrimack, Hillsborough, Rockingham and Strafford since 1995. Gasoline containing MTBE at various concentrations also has been and is sold in other locations throughout the State.

52. On May 30, 2001, the State submitted a petition to EPA requesting to withdraw, or "opt out" of the RFG Program on an expedited basis, citing the significant contamination threat that MTBE poses to New Hampshire's surface and groundwater. The State's petition is still pending before EPA. The State has also adopted rules eliminating any requirement for a minimum oxygenate content in fuel supplied to the State.

#### **C. State Regulation of MTBE**

53. The State regulates MTBE as an "oil" under oil discharge statutes, including RSA 146-A and RSA 146-C, as well as under other statutes and rules designed to protect the State's waters.

54. MTBE contamination is associated with all transportation, storage and use of gasoline containing MTBE.

55. The State provides funding for investigation, remediation, individual third-party damages and other activities related to MTBE contamination in the State through

State-administered petroleum reimbursement funds, the Oil Discharge Cleanup Fund under RSA 146-A, and through general funding.

56. The State has incurred and will continue to incur significant costs and expenses in addressing releases of MTBE into the environment and into waters of the State.

**D. Defendants' Promotion of MTBE and TBA.**

57. Defendants, all of whom have promoted the use of gasoline containing MTBE for its purported environmental benefits, knew or should have known of the grave harm and threat to public health, safety and welfare and the environment represented by the proliferating use of MTBE, including (among other things): widespread pollution of groundwater with MTBE, contamination of public and private drinking water supplies by this harmful and noxious compound, the rendering of drinking water supplies unfit and unusable for consumption, and increased costs to the State in addressing MTBE contamination of drinking water supplies and other waters of the State.

58. Despite knowing that pollution by MTBE was an inevitable consequence of their conduct, and despite the availability of reasonable alternatives (including, but not limited to, adequate warnings), defendants failed to warn customers, retailers, regulators or public officials, including the State, regarding the hazards of MTBE. As production and sales of MTBE and gasoline containing MTBE increased, defendants failed to take any reasonable, appropriate, and special precautions to ensure that gasoline containing MTBE was stored safely. Despite knowing the risk of harm posed by MTBE, defendants also failed to warn purchasers, the public, regulators, and/or the State that without such precautions, increasing amounts of MTBE would be released into the environment and

cause, among other significant adverse effects, long-term groundwater contamination, contamination of water supplies, and threats to public health, safety and welfare.

59. At all relevant times, the defendants have represented to purchasers of MTBE and/or gasoline containing MTBE, as well as to the public and government agencies, that such products were environmentally sound and appropriate for widespread production, distribution, sale and use. Indeed, defendants represented that gasoline containing MTBE could be handled in the same fashion as conventional gasoline, and required no special measures to protect against, respond to, or mitigate suspected releases to the subsurface.

60. Defendants knew, or reasonably should have known, that, throughout the State, the gasoline distribution and retail system contained leaking gasoline delivery systems, and that the nature of such systems involved frequent spillage, leaks and overfills that allowed gasoline to enter soils and waters of the State.

61. Defendants knew, or reasonably should have known, that: (a) MTBE would escape from gasoline delivery systems more readily than the constituents of conventional gasoline; (b) gasoline storage facilities in the State were not designed to prevent any and all leakage of gasoline containing MTBE; and (c) the operators and users of these facilities either (i) were unaware of the special hazards posed by MTBE and the steps necessary to eliminate or mitigate those hazards or (ii) would fail to take such steps.

62. Before introducing MTBE into gasoline delivery systems, the defendants knew, or reasonably should have known, among other things, that, once released into the environment, MTBE would mix easily with groundwater, move great distances, resist biodegradation, render drinking water unsafe and/or non-potable, cause significant



expenses to remove from public and private drinking water supplies and other waters of the State, and otherwise damage and threaten public health, safety and welfare and the environment.

63. Defendants further exacerbated the situation by continued unreasonable and negligent acts, including providing gasoline containing MTBE to gasoline stations without either providing appropriate warnings or taking other precautions adequate to prevent or mitigate releases of MTBE to the subsurface. Defendants did so despite the fact that they knew, or reasonably should have known, that releases of MTBE were substantially certain to occur, because a substantial percentage of those gasoline stations would and, in fact, did: (a) place the gasoline into inadequate and leaking gasoline delivery systems; (b) suffer the routine spillage of appreciable quantities of gasoline containing MTBE in connection with the filling of storage tanks and the use of gasoline dispensing systems; (c) fail to take adequate measures to monitor, detect, and respond to releases of MTBE to soil, surface water and/or groundwater; and (d) fail to take adequate precautions to investigate, contain and clean up releases of MTBE.

64. The widespread problems of gasoline spillage and leaking gasoline delivery systems were well known to the defendants prior to the introduction of MTBE into the State. At least as early as the mid-1960's, defendants knew, or reasonably should have known, that gasoline delivery systems generally suffer significant and widespread leaks and failures, and release gasoline products into the environment, including into groundwater.

65. Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero not only knew about the

widespread problems of leaking gasoline delivery systems generally, but, at all times relevant to this action, had first-hand knowledge and experience regarding leaking gasoline delivery systems and releases of MTBE to groundwater therefrom. These defendants obtained such first-hand knowledge and experience because each of them owned and operated individual gasoline stations with leaking gasoline delivery systems, including gasoline stations in the State, and/or exercised control over such gasoline stations through a variety of means, including but not limited to written agreements, inspection rights, prescribing certain procedures and operating practices, prescribing specifications for products, conditions on sale of branded goods, agreements obligating such stations to acquire, store and sell gasoline containing MTBE, and training. Despite their first-hand knowledge that contamination of waters of the State with MTBE was the inevitable result of their conduct, these defendants continued to refine, market, promote, and supply gasoline containing MTBE.

66. The manufacturers, refiners and suppliers of MTBE and gasoline containing MTBE had a duty and breached their duty to evaluate and test MTBE adequately and thoroughly to determine its environmental fate and transport characteristics and potential human health and environmental impacts before they produced and sold MTBE and gasoline containing MTBE. They also had a duty and breached their duty to minimize the environmental harm caused by MTBE and/or gasoline containing MTBE. Furthermore, they had a duty and breached their duty to take precautions, including warnings, necessary to ensure that gasoline containing MTBE was properly stored and that all necessary measures to promptly detect, contain, abate and respond to spills and leaks were instituted. Nonetheless, defendants, and each of them,

failed to adequately evaluate, test, store, warn, mitigate or otherwise ensure that gasoline containing MTBE would not contaminate waters of the State. As a direct, indirect and proximate result of these failures, MTBE was released, and continues to be released, into the environment, causing and threatening to cause widespread contamination of the waters of the State.

67. In addition to the negligent and/or reckless conduct alleged herein, Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero also intentionally failed to warn downstream handlers, the public and government officials, including the State, as to the threat caused by MTBE and, by agreement and tacit understanding among them, each knowingly pursued or took an active part in a common plan, design and conspiracy to market and promote a product they knew to be dangerous to the environment. In particular, the defendants identified in this paragraph formed and participated in joint task-forces, committees and trade associations for the specific purpose of suppressing, concealing and minimizing information regarding MTBE hazards. These defendants also engaged in separate and joint activity to mislead government agencies, including the State, as well as the public regarding these same dangers. Such defendants' common plan, design and conspiracy, and the acts taken in furtherance of such common plan, design and conspiracy, are a direct, indirect and proximate cause of the MTBE contamination of the waters of the State.

**E. Impact of MTBE on Waters of the State**

68. MTBE has been found in drinking water supplies throughout the State in varying amounts and at varying times. As of 2002, MTBE was present in 13.2% of

public water supplies that were tested statewide, more than 23% of public water supplies that were tested in Rockingham County, more than 33% of public water supplies tested in Strafford County and more than 18% of public water supplies tested in Hillsborough and Merrimack Counties.

69. As of 2003, preliminary results from a study of Rockingham County public water supplies indicate that MTBE is present at some level in more than 41% of the public drinking water supplies that were tested.

70. Based upon studies conducted by other states, the State estimates that MTBE is present at some level in roughly 40,000 private drinking water wells. The State has also estimated from other states' studies that MTBE is present at levels exceeding the health-based MCL of 13 ppb in roughly 3,100 of the 40,000 private drinking water wells estimated to be impacted by MTBE.

71. A 2003 State study of Paugus Bay in Lake Winnepesaukee indicates that MTBE is also present in surface waters that are used as drinking water sources by residents of the State.

72. At all times relevant to this action:

- (a) The manufacturer defendant manufactured, promoted and supplied MTBE to refiners, including certain refiner/marketer defendants, for use as a component of gasoline.
- (b) The refiner/marketer defendants, and each of them, refined, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that was delivered to commercial and consumer users such as retail gasoline stations and other gasoline

delivery systems in the State (and areas affecting waters of the State). Such supplies and deliveries of gasoline containing MTBE to such users in the State occurred over time and continue to occur.

- (c) Gasoline containing MTBE was released and continues to be released to the subsurface from retail gasoline facilities, from other commercial and consumer uses, and from other sources at locations throughout the State and/or in areas affecting waters of the State. Such releases of gasoline containing MTBE have occurred over time and are still occurring, all in varying amounts at different locations.
- (d) MTBE, which takes time to migrate from release points through the subsurface to locations where it may be detected in groundwater, has migrated from dispersed release points at or near the surface at retail gasoline facilities and other sources and facilities within or near the State's boundaries, causing and threatening to cause pollution, contamination, and substantial and continuing damage to the waters of the State, including drinking water, causing damage to the State at such times and in amounts within the jurisdictional limits of this Court.
- (e) Gasoline containing MTBE was released and continues to be released to surface waters of the State through normal consumer usage, including use of motorized watercraft, snowmobiles and other sources at dispersed locations throughout the State. Such

releases of gasoline containing MTBE have occurred over time and are still occurring, all in varying amounts at different locations, causing and threatening to cause contamination and substantial and continuing damage to the waters of the State, including drinking water, causing damage to the State at such times and in amounts within the jurisdictional limits of this Court.

73. At all times relevant to this action, the refiner/marketer defendants together controlled virtually the entire market for gasoline containing MTBE in New Hampshire.

74. MTBE is a fungible product. Once released into the environment, MTBE lacks characteristics or a chemical signature that would enable identification of the refinery or company that manufactured the product. Even when a source of a plume of MTBE – such as a leaking underground storage tank – is identified, the identity of the manufacturer of the MTBE and refiner of the offending gasoline frequently cannot be determined due to the refiner/marketer defendants' practice of trading, bartering, or otherwise exchanging their product with each other, as well as the chemical characteristics of MTBE.

75. Defendants, and each of them, are jointly and severally liable for the costs and damages alleged herein.

76. The injuries to the waters of the State caused and/or threatened by defendants' conduct as alleged herein constitute an unreasonable interference with natural resources that the State holds in trust for the benefit of the public. Such injuries also constitute damages to limited, precious and invaluable public resources in which the State

has a significant property and quasi-sovereign interest. The State's unique interest in protecting the quality of its Waters constitutes a reason personal to the State for seeking damages for restoration of such waters.

### **COUNT I**

#### **(Strict Product Liability Based On Defective Design Against All Defendants)**

77. The State realleges paragraphs 1 through 76 above, and by this reference incorporates them as though set forth in full.

78. The manufacturer defendant designed, manufactured, formulated, promoted, marketed, distributed, exchanged and/or sold MTBE to refiners, including certain refiner/marketer defendants, for use as a component of gasoline.

79. The refiner/marketer defendants, and each of them, designed, manufactured, formulated, refined, set specifications for, exchanged, promoted, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State).

80. Defendants, and each of them, represented, asserted, claimed and warranted that gasoline containing MTBE could be used in the same manner as gasoline not containing MTBE, and/or otherwise did not require any different or special handling or precautions.

81. Defendants, and each of them, knew that MTBE and/or gasoline containing MTBE were to be purchased and used without inspection for defects.

82. MTBE and/or gasoline containing MTBE are defective and unreasonably dangerous products because, among other things:

(a) MTBE escapes more readily from gasoline delivery systems than

the constituents of conventional gasoline.

- (b) MTBE causes extensive groundwater contamination, as well as surface water contamination, when used in its foreseeable and intended manner.
- (c) Even at extremely low levels, MTBE renders drinking water putrid, foul, and unfit for purveying as drinking water to the public.
- (d) MTBE poses significant threats to the public health and welfare and the environment.
- (e) Defendants failed to conduct reasonable, appropriate or adequate scientific studies to evaluate the environmental fate and transport and potential human health effects of MTBE.
- (f) At all times relevant to this action, feasible alternatives to MTBE that would have eliminated the unreasonable danger posed by gasoline containing MTBE, without excessive costs or loss of product efficiency, were available to defendants.
- (g) Commercial grade MTBE is defectively manufactured when it contains and/or degrades into unnecessary but environmental harmful impurities such as tertiary butyl alcohol.

83. At all times relevant to this action, MTBE and/or gasoline containing MTBE were dangerous to an extent beyond that which would be contemplated by the ordinary consumer, and/or the risk of harm to public health and welfare and the environment posed by MTBE and/or gasoline containing MTBE outweighed the cost to defendants of reducing or eliminating such risk.



84. At all time relevant to this action, MTBE and gasoline containing MTBE were used in a manner in which they were foreseeably intended to be used and without substantial change in their condition, and as a proximate result of the defects previously described, MTBE proximately caused the State to sustain the injuries and damages set forth in this Writ.

85. As a direct and proximate result of defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the waters of the State with MTBE, in an amount within the jurisdictional limits of this Court, for which defendants are strictly, jointly and severally liable.

86. As a further direct and proximate result of the acts and omissions of the defendants alleged in this Writ, the State has sustained and will sustain other substantial expenses and damages, in an amount within the jurisdictional limits of this Court, for which defendants are strictly, jointly and severally liable.

87. The injuries to the waters of the State caused and/or threatened by defendants' acts and omissions as alleged herein are indivisible.

88. Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero knew that it was substantially certain that their alleged acts and omissions described above would threaten public health and cause extensive contamination of the waters of the State, public and private drinking water supplies, and property damage. Nonetheless, the defendants identified in this paragraph intentionally failed to warn downstream handlers, the public and government

officials, including the State, as to the threat caused by MTBE, and engaged in separate and joint activities to suppress, conceal and/or minimize information regarding MTBE hazards in order to mislead government agencies, including the State, and the public regarding such hazards. These defendants committed each of the above-described acts and omissions knowingly, willfully, and with oppression, fraud, and/or malice and with conscious disregard of the health and safety of others, and of the State's interest in protecting its natural resources.

89. The conduct alleged herein was performed to promote sales of MTBE and/or gasoline containing MTBE in conscious disregard of the known risks of injury to health, property and the environment. The defendants identified in the preceding paragraph acted with willful and conscious disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the citizens and natural resources of the State. Therefore, the State requests an award of enhanced damages against these defendants that fairly reflects the aggravating circumstances alleged herein. After the completion of additional investigation and discovery, the State may seek leave of court to amend this Writ to allege a claim for enhanced damages against additional defendants if warranted by the facts.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

## **COUNT II**

### **(Strict Product Liability Based On Failure to Warn Against All Defendants)**

90. The State realleges paragraphs 1 through 89 above, and by this reference incorporates them as though set forth in full.

91. The manufacturer defendant designed, manufactured, formulated, promoted, marketed, distributed, exchanged and/or sold MTBE to refiners, including certain refiner/marketer defendants, for use as a component of gasoline.

92. The refiner/marketer defendants, and each of them, designed, manufactured, formulated, refined, set specifications for, exchanged, promoted, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State).

93. Defendants, and each of them, represented, asserted, claimed and warranted that gasoline containing MTBE could be used in the same manner as gasoline not containing MTBE, and/or otherwise did not require any different or special handling or precautions.

94. Defendants, and each of them, knew that MTBE and/or gasoline containing MTBE were to be purchased and used without inspection for defects.

95. MTBE and/or gasoline containing MTBE are defective and unreasonably dangerous products for the reasons set forth in Paragraph 82 above.

96. Defendants, and each of them, knew, or reasonably should have known, of the foreseeable risks and defects of MTBE and/or gasoline containing MTBE. Defendants nonetheless failed to provide adequate warnings of the known and foreseeable risks of MTBE and/or gasoline containing MTBE, including contamination of groundwater with MTBE.

97. MTBE and/or gasoline containing MTBE were used in a manner in which they were foreseeably intended to be used, and as a proximate result of defendants' failure to warn of the risks of MTBE and/or gasoline containing MTBE that were known

to them, MTBE contaminates and threatens the waters of the State, causing the State to sustain the injuries and damages set forth in this Writ.

98. As a direct and proximate result of defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the waters of the State with MTBE, in an amount within the jurisdictional limit of this Court, for which defendants are strictly, jointly and severally liable.

99. As a further direct and proximate result of the acts and omissions of the defendants alleged in this Writ, the State has sustained and will sustain other substantial expenses and damages, in an amount within the jurisdictional limits of this Court, for which defendants are strictly, jointly and severally liable.

100. The injuries to the waters of the State caused and/or threatened by defendants' acts and omissions as alleged herein are indivisible.

101. For the reasons set forth and specifically alleged in paragraphs 88 through 89, the State is entitled to an award of enhanced damages against defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero that fairly reflects the aggravating circumstances alleged herein. After the completion of additional investigation and discovery, the State may seek leave of court to amend this Writ to allege a claim for enhanced damages against additional defendants if warranted by the facts.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

### **COUNT III**

#### **(Public Nuisance Against All Defendants)**

102. The State realleges paragraphs 1 through 101 above, and by this reference incorporates them as though set forth in full.

103. The negligent, reckless, intentional and ultrahazardous activity of defendants, and each of them, alleged herein has resulted in the contamination and pollution of the waters of the State as alleged herein, and constitutes a public nuisance.

104. The public nuisance caused, contributed to, maintained, and/or participated in by defendants, and each of them, has substantially and unreasonably interfered with, obstructed and/or threatened, among other things, the State's significant property and quasi-sovereign interests in the waters of the State, the State's ability to protect, conserve and manage the waters of the State, which are by law precious and invaluable public resources held by the State in trust for the benefit of the public, as well as the rights of the people of the State to enjoy a water supply free from unacceptable health risk, taste, odor, pollution, and contamination.

105. Each defendant has, at all times relevant to this action, caused, maintained, participated in and/or assisted in the creation of such public nuisance. Among other things, each defendant is a substantial contributor to such public nuisance as follows:

- (a) The manufacturer defendant manufactured, promoted and supplied MTBE to refiners when it knew, or reasonably should have known, that: (i) the refiners would in turn blend the MTBE into gasoline; (ii) such gasoline containing MTBE would then be placed into leaking gasoline delivery systems, including those in the State; (iii)

MTBE would be released even more readily than the constituents of conventional gasoline from gasoline delivery systems; and (iv) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate groundwater, including drinking water supplies, and, ultimately, be difficult and costly to find and remove from the water.

- (b) The refiner/marketer defendants, and each of them, refined, marketed and/or otherwise supplied gasoline containing MTBE that was delivered into the State (and areas affecting the waters of the State), when they knew, or reasonably should have known, that: (i) such gasoline would be placed into leaking gasoline delivery systems; (ii) MTBE would be released even more readily than the constituents of conventional gasoline from gasoline delivery systems; and (iii) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate groundwater, including drinking water supplies, and, ultimately, be difficult and costly to remove from the water.
- (c) Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero had first-hand knowledge and experience regarding leaking gasoline delivery systems and releases of MTBE to groundwater

therefrom. These defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or controlled individual gasoline stations with leaking gasoline delivery systems, including gasoline stations in the State.

- (d) Defendants, and each of them, manufactured, refined, marketed, promoted, and/or otherwise supplied MTBE and/or gasoline containing MTBE to downstream handlers, when they knew, or reasonably should have known, that MTBE would: (i) be released into the environment from commercial and consumer uses and sources in the State other than gasoline delivery systems; and (ii) contaminate the waters of the State.
- (e) Despite their knowledge that contamination of the waters of the State with MTBE was the inevitable consequence of their conduct as alleged herein, defendants, and each of them, failed to provide any warnings or special instructions, or take any other precautionary measures to prevent or mitigate such contamination.
- (f) Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero engaged in separate and joint activities to suppress, conceal and/or minimize information regarding the hazards of MTBE in order to mislead government agencies, including the State, and the public regarding the hazards of MTBE.

106. The public nuisance caused, contributed to, maintained, and/or participated in by defendants, and each of them, has caused and/or threatens to cause substantial injury to the waters of the State, in which the State has significant property rights and quasi-sovereign interests.

107. The contamination of the waters of the State with MTBE alleged herein has varied over time and has not yet ceased. MTBE continues to threaten, migrate into and enter the waters of the State.

108. As a direct and proximate result of defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the waters of the State with MTBE, in an amount within the jurisdictional limits of this Court, for which defendants are jointly and severally liable.

109. As a further direct and proximate result of the acts and omissions of the defendants alleged in this Writ, the State has sustained and will sustain other substantial expenses and damages, in an amount within the jurisdictional limits of this Court, for which defendants are jointly and severally liable.

110. The injuries to the waters of the State caused and/or threatened by defendants' acts and omissions as alleged herein are indivisible.

111. For the reasons set forth and specifically alleged in paragraphs 88 through 89, the State is entitled to an award of enhanced damages against defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero that fairly reflects the aggravating circumstances alleged herein. After the



completion of additional investigation and discovery, the State may seek leave of court to amend this Writ to allege a claim for enhanced damages against additional defendants if warranted by the facts.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

#### **COUNT IV**

##### **(Strict Liability Under RSA 146-A/146-G Against All Defendants)**

112. The State realleges paragraphs 1 through 111 above, and by this reference incorporates them as though set forth in full.

113. RSA 146-A:3 provides that the discharge or spillage of oil into the surface water or groundwater of this State, or in a land area where the oil will ultimately seep into surface water or groundwater is prohibited.

114. MTBE is an "oil" as defined in RSA 146-A, which includes petroleum products and their by-products of any kind, and in any form.

115. RSA 146-A:3-a provides that any person who, without regard to fault, directly or indirectly causes or suffers the discharge of oil into or onto any surface water or groundwater of this State, or in a land area where oil will ultimately seep into any surface water or groundwater of the State in violation of chapter 146-A, or rules adopted thereunder, shall be strictly liable for costs directly or indirectly resulting from the violation relating to: (a) containment of the discharged oil; (b) cleanup and restoration of the site and surrounding environment, and corrective measures as defined under RSA 146-A:11-a, III(a) and (b); and (c) removal of the oil.

116. RSA 146-A:9 and 146-G:3 expressly authorize the Attorney General, on behalf of the State, to recover or obtain judgment for the costs of containment, cleanup, removal and corrective measures.

117. Defendants, and each of them, directly or indirectly caused or suffered the discharge of oil in the form of MTBE into or onto the waters of the State and/or in a land area where MTBE has seeped or will ultimately seep into the waters of the State, in violation of RSA 146-A and rules duly adopted by the State.

118. As a direct or indirect result of such violations, the State has incurred, is incurring, and will continue to incur substantial costs including, but not limited to, costs relating to: (a) the investigation, containment, cleanup and removal of the discharged MTBE; (b) restoration of waters of the State contaminated by such discharges; and (c) the institution of corrective measures including, but not limited to, provision of interim water supplies to residents whose water supplies have been contaminated due to such discharges, the establishment of acceptable sources of potable water to injured members of the public, and other necessary remedial actions, all at significant expense, loss, and damage in amounts within the jurisdictional limits of this Court.

119. Defendants are strictly, jointly and severally liable for any and all such costs and damages that the State has incurred and will incur as a result of defendants' actions.

120. Defendants are subject to civil penalties under RSA 146-A:14.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

## COUNT V

### **(Trespass Against All Defendants)**

121. The State realleges paragraphs 1 through 120 above, and by this reference incorporates them as though set forth in full.

122. The State is the owner and/or actual possessor of property rights and interests in the waters of the State, as alleged herein, which the State holds in trust for the benefit of the public. These property rights and interests include, but are not limited to, a quasi-sovereign interest in protecting the quality of such waters from contamination and pollution.

123. Defendants, and each of them, intentionally manufactured, refined, marketed, and/or otherwise supplied MTBE and/or gasoline containing MTBE with the knowledge that contamination of the waters of the State with MTBE was substantially certain to result.

124. Among other things, defendants, and each of them, intentionally caused MTBE to enter, invade, intrude upon and injure the waters of the State as follows:

- (a) The manufacturer defendant manufactured, promoted and supplied MTBE to refiners when it knew that it was substantially certain that: (i) the refiners would in turn blend the MTBE into gasoline; (ii) such gasoline containing MTBE would then be placed into leaking gasoline delivery systems, including those in the State; (iii) MTBE would be released even more readily than the constituents of conventional gasoline from gasoline delivery systems; and (iv) when released into the subsurface, MTBE would spread farther and

faster than other components of gasoline, resist biodegradation, contaminate groundwater, including drinking water supplies, and, ultimately, be difficult and costly to find and remove from the water.

- (b) The refiner/marketer defendants, and each of them, refined, marketed and/or otherwise supplied gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State), when they knew that it was substantially certain that: (i) such gasoline would be placed into leaking gasoline delivery systems; (ii) MTBE would be released even more readily than the constituents of conventional gasoline from gasoline delivery systems; and (iii) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate groundwater, including drinking water supplies, and, ultimately, be difficult and costly to remove from the water.
- (c) Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero had first-hand knowledge and experience regarding leaking gasoline delivery systems and releases of MTBE to groundwater therefrom. These defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or

controlled individual gasoline stations with leaking gasoline delivery systems, including gasoline stations in the State.

- (d) Defendants, and each of them, manufactured, refined, marketed, promoted, and/or otherwise supplied MTBE and/or gasoline containing MTBE to downstream handlers, when they knew that it was substantially certain that MTBE would: (i) be released into the environment from commercial and consumer uses and sources in the State other than gasoline delivery systems; and (ii) contaminate the waters of the State.
- (e) Despite their knowledge that groundwater contamination with MTBE was the inevitable consequence of their conduct as alleged herein, defendants, and each of them, failed to provide any warnings or special instructions, or take any other precautionary measures to prevent or mitigate such contamination.
- (f) Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero engaged in separate and joint activities to suppress, conceal and/or minimize information regarding the hazards of MTBE in order to mislead government agencies, including the State, and the public regarding the hazards of MTBE.

125. The contamination of the waters of the State with MTBE alleged herein has varied over time and has not yet ceased. MTBE continues to threaten, migrate into and enter the waters of the State.

126. The State has not consented to and does not consent to the trespass alleged herein. Defendants, and each of them, knew or reasonably should have known, that the State would not consent to this trespass.

127. As a direct and proximate result of defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the waters of the State with MTBE, in an amount within the jurisdictional limits of this Court, for which defendants are jointly and severally liable.

128. As a further direct and proximate result of the acts and omissions of the defendants alleged in this Writ, the State has sustained and will sustain other substantial expenses and damages, in an amount within the jurisdictional limits of this Court, for which defendants are jointly and severally liable.

129. The injuries to the waters of the State caused and/or threatened by defendants' acts and omissions as alleged herein are indivisible.

130. For the reasons set forth and specifically alleged in paragraphs 88 through 89, the State is entitled to an award of enhanced damages against defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero that fairly reflects the aggravating circumstances alleged herein. After the completion of additional investigation and discovery, the State may seek leave of court to amend this Writ to allege a claim for enhanced damages against additional defendants if warranted by the facts.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

## COUNT VI

### **(Negligence Against All Defendants)**

131. The State realleges paragraphs 1 through 130 above, and by this reference incorporates them as though set forth in full.

132. Defendants had a duty to the State to exercise due care in the design, manufacture, formulation, handling, control, disposal, marketing, sale, testing, labeling, use, and instructions for use of MTBE and/or gasoline containing MTBE.

133. Defendants so negligently, carelessly, and recklessly designed, manufactured, formulated, handled, labeled, instructed, controlled (or failed to control), tested (or failed to test), marketed, sold and otherwise entrusted MTBE and gasoline containing MTBE that they breached their duties and directly and proximately caused MTBE to contaminate and threaten the waters of the State, resulting in the damages alleged in this Writ.

134. Defendants, and each of them, failed to conduct reasonable, appropriate or adequate scientific studies to evaluate the environmental fate and transport characteristics of MTBE, and/or the likelihood that use of MTBE as a component of gasoline would pollute public water supplies, render drinking water unusable and unsafe, and threaten public health and welfare and the environment.

135. The manufacturer defendant, among other things, manufactured, promoted and/or otherwise supplied MTBE to refiners when it knew, or reasonably should have known, that: (a) the refiners would in turn blend the MTBE into gasoline; (b) such gasoline containing MTBE would then be placed into leaking gasoline delivery systems, including those in the State; (c) MTBE would be released even more readily than the

constituents of conventional gasoline from gasoline delivery systems; and (d) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate groundwater, including drinking water supplies, and, ultimately, be difficult and costly to find and remove from the water.

136. The refiner/marketer defendants, and each of them, among other things, refined, marketed, and/or otherwise supplied gasoline containing MTBE that was delivered into the State and/or in areas affecting waters of the State, when they knew, or reasonably should have known, that: (a) such gasoline would be placed into leaking gasoline delivery systems; (b) MTBE would be released even more readily than the constituents of conventional gasoline from gasoline delivery systems; and (c) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate groundwater, including drinking water supplies, and, ultimately, be difficult and costly to remove from the water.

137. Defendants Hess, Citgo, Chevron, ConocoPhillips, El-Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero also had first-hand knowledge and experience regarding leaking gasoline delivery systems and releases of MTBE to groundwater therefrom. These defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or controlled individual gasoline stations with leaking gasoline delivery systems, including gasoline stations in the State.

138. Defendants, and each of them, manufactured, refined, marketed, promoted and/or otherwise supplied MTBE and/or gasoline containing MTBE to downstream handlers, when they knew, or reasonably should have known, that MTBE would: (i) be



released into the environment from commercial and consumer uses and sources in the State other than gasoline delivery systems; and (ii) contaminate the waters of the State.

139. Despite their knowledge that groundwater contamination with MTBE was the inevitable consequence of their conduct as alleged herein, defendants, and each of them, failed to provide any warnings or special instructions, or take any other precautionary measures to prevent or mitigate such contamination.

140. In light of the facts alleged herein, defendants, and each of them, breached their duty to use due care in the design, manufacture, formulation, handling, control, marketing, sale, testing, labeling, use, and instructions for use of MTBE and/or gasoline containing MTBE.

141. As a direct and proximate result of defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the waters of the State with MTBE, in an amount within the jurisdictional limit of this Court, for which defendants are jointly and severally liable.

142. As a further direct and proximate result of the acts and omissions of the defendants alleged in this Writ, the State has sustained and will sustain other substantial expenses and damages, in an amount within the jurisdictional limit of this Court, for which defendants are jointly and severally liable.

143. The injuries to the waters of the State caused and/or threatened by defendants' acts and omissions as alleged herein are indivisible.

144. For the reasons set forth and specifically alleged in paragraphs 88 through 89, the State is entitled to an award of enhanced damages against defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero that fairly reflects the aggravating circumstances alleged herein. After the completion of additional investigation and discovery, the State may seek leave of court to amend this Writ to allege a claim for enhanced damages against additional defendants if warranted by the facts.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

### **COUNT VII**

#### **(Unfair or Deceptive Business Acts In Violation of RSA 358-A:2 Against All Defendants)**

145. The State realleges paragraphs 1 through 144 above, and by this reference incorporates them as though set forth in full.

146. The State enforces Consumer Protection laws through the Attorney General, who is expressly authorized to seek on behalf of New Hampshire consumers redress for deceptive trade practices.

147. Defendants, and each of them, have engaged in acts and/or practices in the conduct of trade and commerce within the State that is unfair and deceptive in violation of RSA 358-A:2 in connection with their design, testing, manufacture, promotion, marketing and supply of gasoline containing MTBE. Such acts and/or practices include, but are not limited to, the following:

- (a) Defendants, and each of them, represented that MTBE and/or gasoline containing MTBE were environmentally sound products appropriate for widespread production and use, when they were not

environmentally sound and appropriate for widespread production and use.

- (b) Despite their knowledge that MTBE is more readily released from gasoline delivery systems than conventional gasoline components, and that, once released into the environment, the fate and transport of MTBE in the subsurface differs significantly from that of conventional gasoline constituents, defendants represented that gasoline containing MTBE does not require special handling, storage or other procedures to mitigate or prevent the special dangers posed by MTBE.
- (c) Despite their knowledge that environmental contamination, and particularly drinking water contamination, with MTBE was the inevitable consequence of their conduct, defendants, and each of them, failed to provide any warnings or special instructions regarding the threat caused by MTBE, or take any other precautionary measures to prevent or mitigate such contamination.
- (d) Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero engaged in separate and joint activities to suppress, conceal and/or minimize information regarding the hazards of MTBE in order to mislead government agencies, including the State, and the public regarding such hazards.

148. By committing the acts and omissions alleged above, among others, defendants, and each of them, have used unfair or deceptive acts or practices in violation of RSA §358-A:2.

149. Pursuant to RSA 358-A:4, b, each defendant is subject to civil penalties of up to \$10,000 for each violation.

150. Pursuant to RSA 358-A:6, IV, defendants are subject to an award of the State's legal costs and expenses.

151. Pursuant to RSA 358-A:5, prior notice to defendants of this action is unnecessary because the Attorney General has reason to believe that defendants would take action to the immediate and irreparable harm of the public if such notice were provided.

WHEREFORE, the State prays judgment against defendants as set forth hereafter.

#### **PRAYER FOR RELIEF**

WHEREFORE, the State of New Hampshire respectfully requests a trial of this Action before a jury, and that, upon a favorable verdict, this Honorable Court enter judgment in favor of the State and against defendants, jointly and severally, as follows:

A. Declare that defendants are jointly and severally liable for the full cost of all investigatory, remedial and other actions necessary to detect, abate, remove and remediate MTBE in the waters of the State and to restore such waters to their original condition, and for such orders as may be necessary to provide full relief to address risks to the State.

B. Pursuant to RSA 146-A:3-a, order defendants to pay all costs related to investigation, containment, cleanup, restoration, corrective measures (as defined in RSA

146-A:11-a, III(a) and (b)) and removal directly or indirectly resulting from the contamination of waters of the State with MTBE.

C. Order defendants to pay compensatory damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE, including but not limited to, the costs of:

(1) testing all public and private drinking water supplies for the presence of MTBE;

(2) treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and

(3) present and future monitoring of surface and groundwaters to detect the presence of MTBE.

D. Order defendants to pay all other damages sustained by the State as a direct and proximate result of defendant's acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State.

E. Order defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero to pay enhanced damages that fairly reflect the aggravating circumstances alleged herein.

F. Order defendants to pay all appropriate civil penalties to the maximum extent permitted by law.

G. Grant all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State.

H. Order defendants to pay costs, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law.

I. Grant such other further relief as this Honorable Court deems just and proper.

**A JURY TRIAL IS DEMANDED ON ALL COUNTS SO TRIABLE.**

THE STATE OF NEW HAMPSHIRE

PETER W. HEED  
ATTORNEY GENERAL

Dated: September 30, 2003

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